amended section of the code which he was charged with violating, was limited by the sectional headnote, "Intoxication of Employees." The demurrer was overruled. On appeal, *held,* conviction affirmed; since the body of the act is clear, the headnote cannot control its interpretation. *State* v. *Crothers* (Wash. 1922) 203 Pac. 74.

The title of an act is evidence to be used in construction. *Du Bois* v. *Coen* (1919) 100 Ohio 17, 125 N. E. 121. But in the absence of constitutional provision, it should not control where the meaning of the body of the act is clear. *Cornell* v. *Coyne* (1904) 192 U. S. 418, 24 Sup. Ct. 383. The constitution of Washington declares that, "No bill shall embrace more than one subject and that shall be expressed in the title." Wash. Const. (1889) art. 2, § 19. Where such a provision exists, the title restricts the scope of the act, and all portions not expressed in the title are void. *Thayer* v. *Snohomish Logging Co.* (1918) 101 Wash. 458, 172 Pac. 552; *Wabash Ry.* v. *Young* (1904) 162 Ind. 102, 69 N. E. 1003. This constitutional provision was inapplicable to the instant case, as a sectional headnote, not a title, was involved. Sectional headnotes are not to be considered if merely inserted by compilers. *Weesner* v. *Davidson Co.* (N. C. 1921) 109 S. E. 863. If they are passed by the legislature, however, some states hold them to limit and define the scope of the act. *People ex rel. Watson* v. *Lamphier* (1918) 104 Misc. 622, 172 N. Y. Supp. 247. Others hold that such headnotes, like titles, are only evidence to be used in construction. *Mackey* v. *Miller* (C. C. A. 1903) 126 Fed. 161; *People ex rel. Bussey* v. *Gaulter* (1894) 149 Ill. 39, 36 N. E. 576. It seems that the New York rule, *supra,* in effect gives to a sectional headnote the importance that is attached to titles only by constitutional provisions. There seems no reason for such a distinction, as titles and sectional headnotes appear to serve similar purposes. But *cf. People* v. *Molineux* (N. Y. 1868) 53 Barb. 9; *aff'd* (1869) 40 N. Y. 113.

TROVER AND CONVERSION—SILENCE AS FRAUD.—A vendor of goods shipped them to the defendant buyer under a negotiable bill of lading with draft attached, which the former sent to its bank for collection. The plaintiff railroad delivered the goods to the defendant by mistake, without demanding a bill of lading. The latter knew that the bill and draft were outstanding, but remained silent as to this fact, though accepting delivery. The plaintiff was compelled to pay the vendor the value of the goods, and brought this action in conversion. *Held,* for the plaintiff. *New York Central R. R.* v. *Freedman* (Mass. 1921) 133 N. E. 101.

Silence as to a material fact which a party to a transaction is in good faith bound to disclose is fraud. *Stewart* v. *Wyoming Ranche Co.* (1888) 128 U. S. 383, 9 Sup. Ct. 101. A duty to speak exists when one sells goods knowing there is a latent defect. *Salmonson* v. *Horswill* (1917) 39 S. D. 402, 164 N. W. 973; *Grigsby* v. *Stapleton* (1887) 94 Mo. 423, 7 S. W. 421. But the seller is not under an obligation to disclose a patent defect. See *Salmonson* v. *Horswill, supra,* 406; *Grigsby* v. *Stapleton, supra,* 427. A purchase by one who is technically insolvent is not fraudulent. See *Gillespie* v. *Piles & Co.* (C. C. A. 1910) 178 Fed. 886, 890. But if the buyer is hopelessly insolvent, his failure to disclose that fact is fraudulent. *Gillespie* v. *Piles & Co., supra.* The basis of these distinctions seems to be, how such silence will be interpreted. If the fact is such that the ordinary man under the circumstances would disclose it, failure to do so is a representation that the fact does not exist. See *Brownlie & Co.* v. *Campbell* (1880) L. R. 5 A. C. 925, 950. Since the standard of conduct is that of the ordinary honest man under the circumstances, the facts which one is bound to disclose vary as the standard of morals of the community varies. Under this test the instant case is correct, for the silence of the defendant amounted to a representation that he believed there

was no negotiable bill of lading outstanding. Since this was false to his knowledge, there was a sufficient basis for the action of trover.

VENDOR AND PURCHASER—MARKETABLE TITLE—POSSIBILITY OF ISSUE.—In an action by the vendor against the vendee, for specific performance of a contract to convey land, the defendant claimed that the title of the vendor was not marketable due to the fact that after-born children of a woman sixty-nine years of age might have an interest in the land. *Held,* for the defendant. *Weberpals* v. *Jenny* (Ill. 1921) 133 N. E. 62.

There is a conflict as to whether a woman past the usual childbearing age is, for legal purposes, sterile. An allegation in a bill to quiet title that a woman was past the childbearing age was said to be "meaningless." See *Hill* v. *Spencer* (1902) 196 Ill. 65, 70, 63 N. E. 614. Partition in equity on the ground that a woman was past the childbearing age was refused. *Hill* v. *Sangamon Loan, etc. Co.* (1921) 295 Ill. 619, 129 N. E. 554. Where a woman above the usual childbearing age would have the sole interest in a trust unless she should bear a child, the court refused to terminate the trust in her favor. *Bowlin* v. *Rhode Island, etc. Trust Co.* (1910) 31 R. I. 289, 76 Atl. 348. Even physicians' testimony to show, in order to terminate a trust, that a woman could not bear children, was excluded. *Ricards* v. *Safe Deposit, etc. Co.* (1903) 97 Md. 608, 55 Atl. 384. In all these cases equity refused to cut off the contingent interest of unborn children on the ground that a woman was above the usual childbearing age. However, there is substantial authority for the proposition that the possibilities of issue of a woman above the usual childbearing age are not such as to make the title unmarketable in a suit for specific performance. *Whitney* v. *Groo* (1913) 40 D. C. App. 496; *In re Tinning and Weber* (1904) 8 Ont. 703; see *Bacot* v. *Fessenden* (1909) 130 App. Div. 819, 823, 115 N. Y. Supp. 698. The same principle has been applied to an agreement to take a lease. *Browne* v. *Warnock* (1880) L. R. 7 Ir. 3. The solution is not found in any course of reasoning. The test is purely one of opinion whether or not the chances of issue are great enough to warrant the conclusion that to compel the vendee to take would be forcing him to "buy a lawsuit." That late fecundity is by no means impossible is indicated by the note to *Macomb* v. *Miller* (N. Y. 1841) 26 Wend. 229, 234. It is to be noted that in these cases of specific performance, unlike the cases above, when the court grants the decree, it is not cutting off the interest of the unborn children.

WILLS—ATTESTATION BEFORE TESTATOR SIGNS—ADOPTION OF WITNESS' SIGNATURE.—The testator declared the instrument to be his will, and requested the witnesses to sign it. They did so. Afterwards, in their presence and as part of the same continuous transaction, the testator signed. *Held,* probate allowed. *In re Haber* (Surr. Ct. Bronx Co. 1922) 66 N. Y. L. J. 1845.

It was formerly held in New York that if the witnesses and the testator had signed as part of the same transaction the will was good, even if the witnesses had signed first. *Vaughan* v. *Burford* (N. Y. 1854) 3 Bradf. 78. Many states still take this view. *Estate of Selva* (1915) 169 Cal. 116, 145 Pac. 1015; *Re Estate of Horn* (1910) 161 Mich. 20, 125 N. W. 696. It has, however, since become well settled in New York that it is not a valid attestation if the witnesses sign before the testator, by merely signing as part of the same transaction. *Jackson* v. *Jackson* (1868) 39 N. Y. 153; *In re Kunkler's Will* (1914) 147 N. Y. Supp. 1094. This is likewise the law in many jurisdictions. *Lacey* v. *Dobbs* (1901) 63 N. J. Eq. 325, 50 Atl. 497; *Marshall* v. *Mason* (1900) 176 Mass. 216, 57 N. E. 340. But an adoption by a witness of a signature already written is in some jurisdictions equivalent to writing it. *Matter of Karrer* (1909) 63 Misc. 174, 118 N. Y. Supp. 427;